

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MACARTHUR TOWERS DEVELOPMENT CO., INC.	:	DETERMINATION
for Revision of a Determination or for Refund	:	ON REMAND
of Tax on Gains Derived from Certain Real	:	DTA NO. 804714
Property Transfers under Article 31-B of the	:	
Tax Law.	:	

Plymouth Tower Associates, c/o Bay Colony Property Company, Inc., 125 Summer Street, Boston, Massachusetts 02110, filed a petition for revision of a determination or for refund of tax on gains derived from certain real property transfers under Article 31-B of the Tax Law.

A hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on July 26, 1990 at 1:15 P.M., with all briefs submitted by November 2, 1990. Petitioner appeared by Kronish, Lieb, Weiner & Hellman (Michael C. DeLisa, Esq. and William Jay Lippman, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Kenneth J. Schultz, Esq., of counsel).

On December 27, 1991, the Tax Appeals Tribunal remanded the matter of MacArthur Towers Development Co., Inc. to the same Administrative Law Judge for reconsideration of his decision to make MacArthur a party to this proceeding.

ISSUE

Whether MacArthur Towers Development Co., Inc. may be added as a party to this proceeding.

FINDINGS OF FACT ON REMAND

On July 8, 1987, the Division of Taxation ("Division") issued to Plymouth Tower Associates ("Plymouth") a Notice of Determination of Tax Due under Gains Tax Law Article 31-B ("gains tax") indicating tax, penalty and interest due of \$1,515,751.00, a credit for payment of \$1,422,192.00 and a balance due of \$93,559.00. This notice pertained to an audit of 340 East 93rd Street Corporation, a cooperative housing corporation to which MacArthur Towers Development Co., Inc. ("MacArthur"), as sponsor under a cooperative conversion plan, had transferred certain real property located at 340 East 93rd Street, New York, New York.

Prior to the transfer of the real property to the cooperative housing corporation, Plymouth Tower Associates had transferred the building to MacArthur Towers Development Co., Inc. in exchange for other real property. MacArthur Towers Development Co., Inc. and Plymouth Tower Associates are subsidiaries of Bay Colony Property Company, Inc.

During the course of the hearing, a power of attorney was introduced into the record of the hearing which indicated that MacArthur had appointed Michael DeLisa, Esq. and William Jay Lippman, Esq. to represent the corporation in this matter. Mr. DeLisa explained that MacArthur was the proper petitioner in this proceeding because of the transfer from Plymouth to MacArthur of the real property located at 340 East 93rd Street prior to the transfer of the real property to the cooperative housing corporation. In addition, both representatives of the corporation indicated that MacArthur had assumed the liability of Plymouth with regard to this matter. At this point in the hearing it was decided that the name of MacArthur Towers Development Co., Inc. would be added to the caption of the determination in this matter. Neither party objected to this decision.

CONCLUSIONS OF LAW ON REMAND

A. This determination is being issued at the request of the Tax Appeals Tribunal and is limited to the issue of whether MacArthur Towers Development Co., Inc. was properly added as a party to this proceeding. The Tribunal also stated that they were uncertain of the basis upon which it was originally decided that MacArthur be added as a petitioner to this matter.

B. The decision to add MacArthur Towers Development Co., Inc. as a party to this proceeding was based upon the following facts:

- (a) Plymouth had transferred the property at issue to MacArthur.
- (b) MacArthur had transferred the property at issue to the cooperative housing corporation.
- (c) MacArthur and Plymouth were 100% owned subsidiaries of Bay Colony Property Co., Inc.
- (d) MacArthur had assumed the liability of Plymouth with regard to this matter.
- (e) Both the Division's representative and the representatives of MacArthur consented to the addition of MacArthur Towers Development Co., Inc. as a party to this proceeding.

C. The notice of determination was issued only to Plymouth Tower Associates and only Plymouth filed a petition to this notice. As subject matter jurisdiction cannot be conferred by consent or stipulation of the parties and a defect in subject matter jurisdiction cannot be waived (see, Robinson v. Oceanic Steam Nav. Co., 112 NY 315; Strina v. Troiano 119 AD2d 566, 500 NYS2d 736), it was improper for MacArthur to be added as a petitioner to this matter.

D. The request to add MacArthur Towers Development Co., Inc. as a party to this proceeding is now denied.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE